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Exempt Action Final Regulation Agency Background Document

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| Approving authority name | State Air Pollution Control Board |
| Primary action | Part VI of 9 VAC 5-140 |
| Secondary action(s) | None |
| Regulation title | Regulation for Emissions Trading |
| Action title | Hg Budget Trading Program for Coal Fired Electric Steam Generating Units (Part VI) [Rev. (C06)] |
| Document preparation date | January 24, 2007 |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

This regulatory action encompasses the establishment of one new part to 9 VAC 5-140; which is summarized below:

Hg Budget Trading Program for Coal Fired Electric Steam Generating Units (Part VI)

This part establishes an Hg Budget Trading Program which addresses the following substantive provisions: applicability, permitting, allowance methodology, monitoring, banking, and compliance determination. Virginia's Hg annual trading budgets are 1,184 pounds in 2010 through 2017 and 468 pounds in 2018 and thereafter.

Beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the Hg emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in ounces per year) during the months of January 1 through December 31, otherwise know as the control period. The Hg allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2001 is the cutoff for determining whether a unit is

new or existing. An initial set-aside of 4% of the Hg trading budget is provided for use by new units for each control period in the first five years, dropping to 1% in subsequent years.

A set-aside for new energy efficiency/renewable energy units consisting of 1% of the Hg trading budget is provided for each control period. Procedures are included for the allocation of the allowances in the set-aside budget. The allocated allowances must be retired permanently, are not capable of being lawfully traded under the Hg Budget Trading Program, and are not to be submitted to EPA; the unallocated allowances expire after three years.

If a unit does not use all of its allowances for a specific control period, those extra ounces may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of Hg generated above the allocated allowances.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1; i.e., for every ounce over its allocations, three ounces will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt into the program.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On January 16, 2007, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulation for Emissions Trading", specifically Hg Budget Trading Program for Coal Fired Electric Steam Generating Units (Part VI) (9 VAC 5 Chapter 140). The regulation amendments are to be effective on a date as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the Board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Section 10.1-1328 C of the Code of Virginia requires that the Board adopt a "state model rule" or "state trading rule" that will allow the state to implement the EPA Clean Air Mercury Rule (CAMR) and facilitate the trading of Hg allowances within the United States. However, the state model rule must differ from the federal model rule with regard to the size of the new source set-aside. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. The rule is designed to reduce the regional deposition of mercury and its subsequent entry into the food chain. The final rule calls for an interim cap of 38 tons per year (tpy) of mercury emissions by 2010 and a second-

phase cap of 15 tpy by 2018 (current emissions are approximately 48 tpy). CAMR is effective July 11, 2005, and the plans and associated regulations to implement the CAMR are due November 17, 2006. On June 9, 2006 (71 FR 33388) and December 22, 2006 (71 FR 77121), EPA published amendments to the CAMR.

The CAMR establishes “standards of performance” limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap, due in 2010, is 38 tons and emissions will be reduced by taking advantage of “co-benefit” reductions – that is, mercury reductions achieved by reducing sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

In the CAMR, EPA has assigned each state an emissions “budget” for mercury, and each state must submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR includes emissions guidelines for the affected coal-fired utility units. States have some flexibility in how they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

Virginia's budget portions of the national annual emissions caps are 0.592 tons (1,184 pounds) in 2010 and 0.234 tons (468 pounds) in 2018.

The regulation amendments contained in this action are intended to meet the requirements of the guideline provisions of 40 CFR 62.24 (h)(6) and (7), as amended by 10.1-1328 C of the Code of Virginia. The guideline provisions consist of a cap-and-trade program and are found in 40 CFR Part 60, Subpart HHHH.

Family Impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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